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Supreme Court, U.S.
FILED
JUN 4 1999
OFFICE OF THE CLERK

NO. 98-1161

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

CITY OF ERIE, et al.,

Petitioners,

v.

PAP'S A.M., t/d/b/a/ KANDYLAND,

Respondent.

On Writ of Certiorari
To the Supreme Court of Pennsylvania

RESPONDENT'S MOTION TO DISMISS AS MOOT

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RESPONDENT'S MOTION TO DISMISS AS MOOT

Pursuant to Rule 21.2(b), Respondent moves to dismiss the Writ of Certiorari as moot.

STATEMENT OF FACTS

Relevant facts relied upon by Respondent on this Motion.

Respondent was the owner of a nude dancing club known as Kandyland. Respondent's business was located at 1402 State Street, Erie, Pennsylvania.

Respondent no longer operates a nude dancing club at any location. Kandyland is no longer in business. The former Kandyland location is now a comedy club. No nude dancing occurs on those premises. The outcome of this case will have no effect upon Respondent.

ARGUMENT

Article III of the Constitution requires the existence of a case or controversy in order for the Court to exercise jurisdiction. ***DeFunis v. Odegaard,*** 416 U.S. 312, 317 (1974). As the Court stated:

> "The starting point for analysis is the familiar proposition that 'federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.' ***North Carolina v. Rice***, 404 U.S. 244, 246, 92 S.Ct. 402, 404, 30 L.Ed.2d 413 (1971). The inability of the federal

judiciary 'to review moot cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' ***Liner v. Jafco, Inc.,*** 375 U.S. 301, 306 n. 3, 84 S.Ct. 391, 394, 11 L.Ed.2d 347 (1964); see also ***Powell v. McCormack***, 395 U.S. 486, 496 n. 7, 89 S.Ct. 1944, 1950, 23 L.Ed.2d 491 (1969); ***Sibron v. New York***, 392 U.S. 40, 50 n. 8, 88 S.Ct. 1889, 1896, 20 L.Ed.2d 917 (1968). Although as a matter of Washington state law it appears that this case would be saved from mootness by 'the great public interest in the continuing issues raised by this appeal,' 82 Wash.2d 11, 23 n. 6, 507 P.2d 1169, 1177 n. 6 (1973), the fact remains that under Art. III '(e)ven in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction.' ***North Carolina v. Rice, supra***, 404 U.S., at 246, 92 S.Ct., at 404." (416 U.S. at 317)

In ***Board of License Commissioners of the Town of Tiverton v. Pastore,*** 469 U.S. 238 (1985) the Court was advised at oral argument that the Respondent-licensee had gone out of business. The Court dismissed the Writ as moot.

CONCLUSION

Respondent no longer operates a nude dancing club. Kandyland is no longer in business. A decision by this Court will have no effect upon Respondent. The Writ of Certiorari should be dismissed as moot.

Respectfully Submitted,

AMBROSE, FRIEDMAN and WEICHLER

By _____

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